NOMINATION—CIVIL AERONAUTICS BOARD

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

CLINTON DAN McKINNON, TO BE CHAIRMAN, CIVIL AERONAUTICS BOARD

OCTOBER 21, 1981

Serial No. 97–68

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1981

86-434 O

S261-85

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NOMINATION—CIVIL AERONAUTICS BOARD

WEDNESDAY, OCTOBER 21, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:41 a.m., in room 357, Russell Senate Office Building, Hon. Nancy Landon Kassebaum presiding.

OPENING STATEMENT BY SENATOR KASSEBAUM

Senator KASSEBAUM. We will go ahead and start the hearing although there will still be some coming in, including Congressman Lowery, and I believe Senator Cannon will be here.

I will go ahead with my introductory remarks and then introduce you, Senator Hayakawa.

It is a pleasure to have the hearing and to welcome you today, Mr. McKinnon.

Mr. MCKINNON. Thank you.

Senator KASSEBAUM. If confirmed, you will be taking the helm of the CAB at an important time in its history. Although you have been asked to oversee the demise of the Federal agency, your task will not be a simple one. As the Board's functions are eliminated or transferred, your role in smoothing this transition will be crucial, I believe, in the success which early sunset will hopefully accomplish.

As you know, while most agree that early sunset is a wise policy, there are serious concerns about how the process should be accomplished. Congress will be helpful in this effort by giving the Board and DOT clear mandates as to how various economic regulatory authorities are to be eleminated or transferred.

In my work with deregulation legislation of all types—trucking, rail, banking, and airline legislation—I have frequently perceived a desire on the part of the regulatory agencies implementing these changes to move beyond the mandates of Congress.

The early sunset bill, when it takes its final form, will undoubtedly result in compromises that may not please the more avid deregulators among us. Likewise, there will be those who say certain provisions move the legislation and the industry too quickly toward deregulation. But the point to remember is that these compromises strike the balance between regulation and free enterprise that Congress has decided is appropriate for national policy.

Your job and that of the rest of the Board should be to adhere to these congressional directions. The Board should implement the policy Congress sets, not the policy it believes Congress should set.

These are challenging times for the airline industry. We will work closely with you to set appropriate policy to meet this chal-

lenge. We also will watch closely to see that that policy has been implemented.

Senator Hayakawa, it is a pleasure to welcome you. You may introduce Mr. McKinnon.

STATEMENT OF HON. S. I. HAYAKAWA, U.S. SENATOR FROM CALIFORNIA

Thank you, Madam Chairman.

Madam Chairman, I am pleased to appear before you today to introduce the Reagan Administration's nominee to be a member of the Civil Aeronautics Board, Mr. Clinton Dan McKinnon of my home State of California.

As I understand it, the President intends to designate Mr. McKinnon the Chairman upon confirmation.

Mr. McKinnon is currently the owner of two radio stations in California and two television stations in Texas. In addition, he owns a music publishing firm. A man of many talents. Aside from his business involvements, Mr. McKinnon has been very active in local public service projects, earning him numerous honors and awards.

After attending elementary and secondary schools in California Mr. McKinnon attended the University of Missouri, received a bachelor of arts degree in history, political science and economics.

In 1969 he attended the Harvard Graduate School of Business. Between his undergraduate and graduate work Mr. McKinnon served as a lieutenant in the Navy, piloting rescue helicopters.

I understand he achieved a record for air/sea rescues during his career.

Mr. McKinnon has had a long career in management and a great deal of experience in aviation matters. These qualities will, I am sure, assist him in directing the orderly sunset of the Civil Aeronautics Board.

Thank you, Madam Chairman.

Senator KASSEBAUM. Thank you very much.

It is also a pleasure to welcome two California Congressmen, Congressman Lowery and Congressman Hunter.

Congressman Hunter, you were here first.

STATEMENT OF HON. DUNCAN HUNTER, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HUNTER. Thank you very much, Madam Chairman.

It is a great pleasure to be here with Senator Hayakawa and Bill Lowery, my fellow San Diegan, in presenting Dan McKinnon this morning.

I have a brief statement for the committee that I would like to offer into the record.

I would like to direct my comments to several points that I think are pertinent. Dan has excellent credentials in managing people and business, and he has built one of the most successful and largest businesses in San Diego.

He is also in a business that is very heavily regulated. As you know, the communications industry is heavily regulated, and I think this has prepared him well for the regulatory environment that he is going to find in this job.

I also like the fact that Dan has extensive experience in aviation, especially from his military background. As Senator Hayakawa pointed out he saved 62 American lives in his career as a pilot. He has an extensive background in aviation, and yet with his business ties his background is independent of the aviation industry, which I think is important.

I would like to point out one other thing, speaking as a member of the House Armed Services Committee. Dan has regularly updated himself, and I know this personally, and kept himself fully briefed concerning our defense posture, and particularly our military airlift posture. This is important because of the proposals that have been made to complement our military airlift perhaps with some of our domestic airlift from the civilian sector. I think that is an area that is important for him to be expert in, and he is. He regularly briefs himself with our committee on the posture of our defense airlift.

I would like to conclude by saying that Dan has tremendous integrity. We respect him greatly. I am not experienced in the search of applicants for this type of a job, but I don't think you could possibly find a better applicant anywhere, and we heartily recommend his approval by this body.

Thank you.

[The statement follows:]

STATEMENT OF HON. DUNCAN HUNTER, U.S. REPRESENTATIVE FROM CALIFORNIA

Madame Chairman, I appreciate the opportunity to testify before the Committee today concerning the qualifications of Dan McKinnon to serve as chairman of the Civil Aeronautics Board.

The name McKinnon means much to San Diegans. Dan's father served in Congress nearly three decades ago, and the nominee has distinguished himself in service to the community for decades.

The Committee is aware, I'm sure, of Dan McKinnon's exemplary military record. Serving three years in the late 1950s in the Navy's Helicopter Utility Squadron in San Diego, McKinnon was responsible for the rescue of 62 American lives throughout the Pacific.

McKinnon's experience in aviation spans his entire life. However, it is a background characterized by independence from the aviation industry—a key consideration for those in this body who believe strongly in the separation of interests.

Finally, I would like to offer a personal note about the nominee. In my years of knowing him, he has always impressed me as a man with an ability to understand and dissect complex issues. He is not one who dabbles in superfluous action. Dan McKinnon will provide the kind of independent, reasonsed leadership that the Executive Branch needs in order to serve the public interest.

I heartily recommend the approval of this body for the nomination of Dan McKinnon. Thank you.

Senator KASSEBAUM. Thank you very much, Congressman Hunter.

STATEMENT OF HON. BILL LOWERY, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. LOWERY. Thank you, Senator.

It is indeed a pleasure for me to be here and introduce to the committee, Dan McKinnon, a constituent and good friend.

Senator Hayakawa and my colleague, Duncan Hunter, have outlined much of Dan's background by way of his resumé. Let me say that Dan is an outstanding leader in San Diego and has been for many, many years. We have worked together on a number of projects. One that immediately comes to my mind is Dan serving as

chairman of my city council election some years ago, and we have been adversaries a time or two, most notably in a primary election in 1980 for the Congress.

He is truly an individual that has the qualifications, the capabilities, and the background this administration is looking for, particularly in some difficult times ahead of phasing out an agency.

Dan has more licenses in the sky than most people I know, from flying gliders to helicopters to high performance military jet aircraft.

He is an excellent choice for the administration. I do hope this committee will recommend his nomination to the full Senate.

Senator KASSEBAUM. Thank you very much. I appreciate both of you being here and adding to this hearing.

Mr. McKinnon.

STATEMENT OF CLINTON DAN MCKINNON

Mr. MCKINNON. I just wish I could leave now after all those kind words.

I have no statements, Senator Kassebaum. I am prepared to answer any questions you might have on my qualifications to serve on the Civil Aeronautics Board.

I do thank the Senator from my State, Senator Hayakawa, and my two fellow Congressmen, who are my representatives, one right in my district, and another has the adjacent district, for being here today.

Senator KASSEBAUM. We appreciate their being here too.

I promise you, with your aviation background, I won't ask you what you think of AWACS. You are probably the only one at this point who hasn't been asked officially.

Do you believe, Mr. McKinnon, that deregulation has progressed smoothly enough to allow the Board to accelerate on its own the pace of relinquishing regulation responsibility?

Mr. MCKINNON. Yes, Ma'am, I do. I believe it has. Because those functions which are going to phase out at sunset, it seems to me it would be wise to phase out gradually rather than when the lights go out at CAB. That would save a whole lot of adjustment that the industry would have to make all at once in sorting out those things at the actual time the CAB sunsets. So I think it is wise that they do phase out what can be prior to the actual closing date.

Senator KASSEBAUM. Have you had enough time to study the organization at CAB to give some thought to changes in staff that you would envision and how you would assume they would be absorbed or transferred to other areas?

Mr. MCKINNON. Yes, ma'am. You know, when you live in another part of the country you hear all the stories about Washington and bureaucrats and all types of stories. I have really been impressed with the caliber and the quality of the staff at the Civil Aeronautics Board.

From my personal viewpoint, I think it would be wise to have the best possible people in the job, and it looks like they have some very fine people down there, and I am not coming in to shake up the tree, so to speak, and bringing in a whole new group of people. We want to do the best job possible, and I think having the best people on the job is going to be the way to do it.

Senator KASSEBAUM. So you would envision retaining most of the staff?

Mr. MCKINNON. Right, without coming in with a lot of changes.

Senator KASSEBAUM. Without substantial changes?

Mr. MCKINNON. Yes, ma'am. As far as transferring, it seems to me they have a very fine program oriented toward the gradual phaseout of the CAB and it is well organized and what is going to go over to the Department of Transportation is pretty well thought out. There are still some decisions to be made, but they have got a good line on it right now.

Senator KASSEBAUM. Last month, at the request of the President, the Board postponed implementation of the IATA, the International Air Transportation Association, show-cause proceeding. What are your views about this case, recognizing that you, obviously, have not had a lot of time perhaps to analyze it or are reluctant to discuss it at this time? But I believe it is a very important question regarding international aviation policy.

Mr. MCKINNON. I have not made any decisions on that. I have studied it. Like the issues that come before you in the Senate, it is a very complex issue and there are a lot of viewpoints on it. I know I will have to make a decision on it. When I get all the facts together I feel I will be in a position to make a decision on the show-cause order.

I generally do favor competition and believe that bilateral negotiations are perhaps the best way to solve international problems for our airlines and other countries' airlines.

Senator KASSEBAUM. Well, as sunset approaches, what role do you envision for international negotiations? How do you envision that being handled?

Mr. MCKINNON. Well, as I mentioned, I believe that bilateral negotiations are probably the best way to handle aviation problems between different countries and I would do everything I could to serve the interests of the United States.

Senator KASSEBAUM. On a country-by-country basis?

Mr. MCKINNON. Yes, ma' am. I think with multilateral negotiations it would be very difficult to get everybody to agree on the same issues at the same time.

Senator KASSEBAUM. Senator Cannon, do you have any questions you would like to ask?

Senator CANNON. Thank you very much, Madam Chairman.

Mr. McKinnon, in response to the committee's written questions asking you why you are qualified to be CAB Chairman you stated as your first reason, "I share the same philosophies as President Reagan." Therefore, one of my very important questions is, have you every believed or do you now believe that ketchup is a vegetable?

Mr. MCKINNON. I think I would have to study that, Senator.

Senator CANNON. Well, you know the administration took that position with respect to the school lunches, although I understand they have changed it now. But I know that our airline food is already full of strange and mysterious ingredients and I thought we ought to know what your position is on that.

Do you believe that the decision in 1978 to deregulate the airlines was a correct decision?

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Mr. McKINNON. Yes, sir, I do.

Senator CANNON. What empirical evidence would you cite to show that air deregulation is working successfully?

Mr. McKINNON. It is my understanding that since that time the consumer has saved over $1 billion in ticket costs by traveling in the United States because of deregulation. It seems to me you also have a more efficient system. You have less subsidies, taxpayer subsidies, to airlines because you had deregulation, and the essential air service program that was an outgrowth of that, as I study it, seems to me to be a brilliant concept, and as Chairman of the CAB I would certainly work to preserve that system and hand it over to DOT in good shape.

Senator CANNON. How do you perceive the Chairman's role at the CAB with respect to the other four members?

Mr. McKINNON. Well, I believe the Chairman's role should be one of leadership among the Board. There are only five votes on the Board and each person's vote counts the same. But the Chairman has the responsibility of leadership of the Board in setting directions and providing for people to have a focal point and also to report to you all here in the Congress when you have any questions.

Senator CANNON. A cornerstone of deregulation's foundation is that actual and potential entry will police upward pricing without Government regulation. Now with the PATCO strike crippling entry and even reducing existing competition, how can we justify the elimination of the fare regulation by October 1, 1982?

Mr. McKINNON. That is a good question, sir.

Unfortunately, as far as the total regulation, the CAB does not have all control of that now with the FAA and the PATCO labor situation.

On the first part of your question, I would work with the FAA to try to be sure that all airlines are protected as far as access and entry into airport, particularly with the 22 regulated airports.

I would have to study as far as how it relates to the fares, with the PATCO strike and what effect that would have on the airlines and whether that really would serve a useful purpose to continue regulating fares.

Senator CANNON. If the administration should adopt a position opposed to the CAB decision on the IATA show-cause order or on any other matter that may come up before the Board, how would that influence your decision?

Mr. McKINNON. Well, it is my understanding the CAB is an independent regulatory agency and by appointment of the President and confirmation of the Senate I am obligated to carry out the responsibilities outlined in the laws passed by the Congress, and I would fulfill those responsibilities. I just think if you are an independent regulatory agency you need to have independent thinking, and that is my responsibility as chairman.

Senator CANNON. What is your view of the Board's past pro-competitive international policy?

Mr. McKINNON. Sir, that is a complex issue. I generally favor competition and I favor a free enterprise system, and that gets into the IATA show-cause order to a degree, and I am really studying that. That is to me probably one of the two major issues that I am

going to face during the period I am on the CAB, the international situation, and I am still, quite frankly, forming some opinions on it. I don't have it all resolved in my own mind.

Senator CANNON. The International Aviation Competition Act provides a procedure for airlines to file complaints against foreign countries if they believe they are being treated unfairly. An example is one recently filed by Flying Tiger against the Canadian Government. How do you believe the United Stats should respond in cases where we find out that in fact the U.S. airline is being competitively disadvantaged by a foreign country?

Mr. MCKINNON. If I think there is discrimination against our airlines I am going to do what I can to back up our airlines with foreign countries.

Senator CANNON. In my view the Board has been overly conservative in its administration of the small community essential air service program set up by deregulation. In my own State the Board has permitted replacement service with aircraft that don't have enough performance to handle the high altitude service that is necessary. Now I hope you give this program your immediate attention and high priority, because I plan to see that Congress reexamines the laws and the criteria for essential air service if the Board won't handle these problems on a case-by-case basis as we originally intended.

Mr. MCKINNON. You can rest assured I will do so, sir.

Senator CANNON. Merger cases have taken up much of the Board's time of late and in a little more than a year the Board's 408 and 409 authority will expire, but in the meantime the Board has expressed the possibility that future and pending cases be handled by show-cause procedures. I can understand that procedure in noncontested mergers, but in a contested case I don't see how the Board can tell a party that wants to make his case in a hearing that he can't when in the past all parties to a contested merger have always been given a full hearing of their views.

How important do you believe that precedent is for the Board in its remaining life?

Mr. MCKINNON. I think some of the merger issues, as I have read through the past history of the CAB, have been very complex issues. It would seem to me that each case would be an individual case to be set up on its own merits. It would be hard to come up with a whole blanket policy, although I am sure in fairness to all parties involved all the facts should be able to be brought out and everybody should have an opportunity to present the facts.

Senator CANNON. Well, I am not sure that that lets me know what your position is going to be on that particular issue, but you may want to provide some added information to me later on that point.

Travel agents have recently and vocally expressed to me the feeling that the Board lacks understanding of their industry and the time that they need to adjust to a deregulated environment. Will you make an effort to meet with this group and spend some of your initial time familiarizing yourself with their adjustment problems?

Mr. MCKINNON. I certainly will, sir. As a matter of fact, for your information, before I left San Diego I met with a group of different

travel agents at my own volition. I called them to ask them about what their problems and concerns were.

Senator CANNON. Thank you, Madam Chairman.

Senator KASSEBAUM. I would like to continue with the question of mergers and acquisitions. Under section 801 of the Federal Aviation Act the President has traditionally reviewed Board action regarding mergers and acquisitions. However, it is my understanding that certain acquisitions have not been studied by the President and sent to him for review. Do you believe it is appropriate for the President to review all acquisition and merger cases or only certain ones? And if only certain cases should be submitted to the President for review, how should that determination be made?

Mr. MCKINNON. Senator, that is one of the most complex parts of the whole CAB law. It is my understanding that the cases that have been submitted to the President for review have been cases that involve his considerations on national defense or foreign affairs issues, or at times when airline mergers really were where the airlines were merged into one system. Some of the issues that have not been sent to the President were when airlines merge but they really kept separate operational identities and the routes remained the same and did not merge.

I think it would be hard to have a blanket policy on that and each case would probably have to be considered on its individual merits because the law is somewhat cloudy on what issues go to the President and what don't.

I don't know if you had any specific examples in mind. I even hesitate to comment on them so I didn't prejudice myself when I get on the Board.

Senator KASSEBAUM. I think it will be an increasingly troublesome issue for us as more and more cases perhaps will need to be studied carefully. And with this proviso that the President also review those cases, I think that there will be a need for some clarification. I believe it should be clearly defined so that there will be understanding all around on how this will or should be handled.

Mr. MCKINNON. I would submit to you, Senator, as I get in there and as I understand more of the details of how this has worked in the past, perhaps I could come back to you and offer some suggestions so you could develop some laws that can be very clearcut rather than fuzzy as it is today.

Senator KASSEBAUM. After the Board's sunset, what kind of price posting system do you believe would be appropriate?

Mr. MCKINNON. Well, it is my understanding that with the phaseout of the Board the price posting system is eliminated and there is none. In my industry, the broadcasting industry that I have come from for the last 20 years, they have over 8,000 broadcast stations and those stations have had a system that has worked for a long time and they have a lot of rates. I imagine they have got about as many rates as the airlines have. Maybe some of them even more. And they submit monthly their rates for every radio station in the United States to an organization called Standard Rate and Data, and those are published in a big book monthly. Anybody that is interested in the rates for any broadcast station in America, can acquire a copy of that book and they have them. I am wondering if such a similar system wouldn't work for the airline

industry as well, although I want to assure you I have an open mind on the issue and as we get more facts on it I can be persuaded otherwise.

Senator KASSEBAUM. Thank you very much, Mr. McKinnon. That is all the questions Senator Cannon and I have.

I would like to state that there are some letters from Fred Fielding, counsel to the President; David Kirstein, general counsel to CAB; and Stephen Sharp, general counsel of the FCC, that I would like to have made part of the record.

Also, any further written questions will be made part of the record along with any answers thereto that might be submitted.

Thank you very much, and all best wishes in this very important job of dismantling an agency.

Mr. MCKINNON. Thank you, ma'am.

[The biographical sketch, answers to questions of the committee, and material submitted for the record follow:]

Senator KASSEBAUM. The hearing is adjourned.

[Whereupon at 10:06 a.m. the hearing was adjourned.]

BIOGRAPHICAL SKETCH OF CLINTON DAN MCKINNON

Name: Clinton Dan McKinnon. Known as Dan.

Address: Unit 608, Watergate South, 700 New Hampshire Ave., NW., Washington, D.C. 20037.

Date and place of birth: January 27, 1934, San Bernardino, Calif.

Marital Status: Single.

Names and ages of children: Holly Jean McKinnon, 20; Sherri Lynn McKinnon, 18; Clinton Scott McKinnon, 17.

Education: University of Missouri 1952-1956, BA 1956.

Employment: 1956-1960—Naval Aviator—U.S. Navy; 1960-1962—Sentinel Newspapers, San Diego, Calif., reporter, photographer, advertising salesman; 1962-present president and general manager, KSON owner, radio stations, San Diego, Calif.

Government experience: 1950-1952—Page, U.S. House of Representatives.

Memberships: President and board member—Country Music Assocation; board member—National Association of Broadcasters; board member—California Broadcasters Association; board member—Youth for Christ; board member—San Diego Rotary Club; member—San Diego Advertising and Sales Club; member—Delta Upsilon Fraternity; board member—San Diego Chamber of Commerce; board member—San Diego Coalition; member—San Diego Chapter Navy League; member—Tail Hook.

Political affiliations and activities: Member, Republican State Central Committee—Calif.; financial contributions, too numerous to recall, to campaigns. including Ronald Reagan for President; Dan McKinnon for U.S. Congress; plus other Congressional, Assembly, City Council and State Senate candidates. Member, Republican Associates. Republican candidate for U.S. Congress 1980.

Honors and awards: 1980—Presidents Award, Country Music Association; 1980—Media Man of the Year, Navy League, San Diego; 1980—Better Life Award, San Diego Health Care Association; 1978—Listed in Who's Who in America; 1976—Mexican-American Foundation Man of Distinction Award; 1975—Youth for Christ's International President's Award for Community Service; 1973—"Good Guys" Award for businessmen and women by the Leukemia Society; 1973—Selected nationally as the Radio Station Manager of the Year by Billboard Magazine; 1971—Selected nationally as one of ten newsmen for special briefing of NATO headquarters in Brussels and Common Market; 1971—Advertising Man of the Year Award—San Diego Advertising and Sales Club; 1970—San Diego County VFW Award for Patriotism; 1968—Gavin Award, industry-wide, Radio Station Manager of the Year Award; 1967—National Safety Council Public Interest Award; 1967—George Washington Honor Medal—Freedom Foundation Award; 1967—Most Promotion Minded Radio Station Operator by Country Music Association; 1965—Selected one of ten Outstanding Young Mem of the Year by the Junior Chamber of Commerce of San Diego.

Publishing writings: Author, The Good Life, 1973, Stackpole Books; coauthor Radio Programming in Action—Hasting House.

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

CIVIL AERONAUTICS BOARD,
Washington, D.C., November 5, 1981.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to answer both the additional set of majority questions and the questions submitted by Senator Harrison Schmitt. Since these questions are to complete the record of my confirmation hearing, I have not prepared detailed answers based upon the work of the Board's staff. Rather, my answers reflect my general understanding of the issues based upon briefing materials and conversations with senior staff and members of the Board.

MAJORITY QUESTIONS

Question 1. I understand that a substantial proportion of the workload of the professional staff of the Board's Bureau of Consumer Protection is spent on investigating smoking and credit-card transaction refund complaints that passengers file with it. In light of the movement toward deregulation, do you believe that such a high level of government involvement in passenger-airline disputes is sensible?

Answer. As the industry moves toward sunset and full deregulation, I believe the Board should continue to reassess the need for various regulations. Currently, the Board has a smoking rule and is required by the Consumer Credit Protection Act to handle complaints involving credit card transactions. I believe until the rules are abolished or the law is changed the Board has an obligation to take some action when complaints are filed. I understand, however, that the Board's Bureau of Compliance and Consumer Protection spends very little of its time in processing these complaints and in general encourages consumers to seek relief through state and local consumer protection agencies and state courts to which it has transferred much of the enforcement responsibility.

Question 2. In a recent order, the Board seems to have concluded that the FAA's Interim Operation Plan, which is designed to respond to the air traffic control system's currently diminished capacity, means that operations are back to near-normal (Order 81-9-168.) Can you reconcile that conclusion with Secretary of Transportation Lewis' statement that users of the air transportation system are facing six months of disruption? (October 7, 1981 interview with UPI)

Answer. The Board is currently considering the Air Transport Associations petition for reconsideration of Order 81-9-168 so I cannot speak to the specifics. I believe the Board's Order indicated that passenger levels—and not operations—had returned to near normal. I'm sure the Board will consider fully all the concerns expressed by the ATA before issuing a final decision on whether to continue the special exemptions from various rules and statutory obligations it has granted the carriers to lessen the impact of the controller shortage.

Question 3. The Board has been engaged for about two years in a detailed investigation into the sale of air transportation in the Competitive Marketing Case. (Docket 36595) With the date of the sunset of the Board likely to be accelerated, do you regard this case as a wise use of the agency's diminishing resources?

Answer. Marketing, distributions and retail sales of a product is one of the most critical elements of a competitive industry. In the Competitive Marketing Case the Board is reviewing a marketing and distribution system which was born, nurtured and matured in a regulated environment. While much of this system still may be compatible with a competitive marketplace, parts of the current system may be seriously anticompetitive. It seems to me wise to get the facts and then base a decision on the facts. The CAB seems to be the only organization fully capable of getting all the facts. The issue will rise again in the future till all the facts are presented, so why not get them now and then the issue can be solved one way or the other for a long time to come. It seems to me the key area of study is domestic air transportation.

Question 4. Airport access problems have recently generated considerable interest in the aviation community. How do you see the Board's role in this matter?

Answer. The Board's role is to implement the goals and objectives of the Airline Deregulation Act. Actions of airport proprietors may sometimes conflict with those goals. When conflicts occur, I believe the Board has an obligation to work with the airport operator and the Federal Aviation Administration to find a solution.

SENATOR SCHMITT'S QUESTIONS

Question 1. Airline Deregulation has allowed smaller commuter airlines to carve out a niche in the marketplace. This is true not only along the high density corridors but in rural areas as well. What can be done to continue expansion of commuter airlines while also making interline transfer more convenient?

Answer. As the costs of serving smaller markets with large jet aircraft continue to rise the commuter industry should continue to grow. While subsidies paid under the Board's essential air service program enables some commuters to operate which otherwise might not, it is growth in demand spurred by good service that is the best guarantee for the success of the commuter industry. As the commuters carry more traffic to hub airports, I suspect that larger carriers will seek to improve interline services in order to secure more feed traffic for their longer haul routes.

Question 2. Many consumers who fly today are looking for the lowest fare. When they call an airline, many times they are quoted a regular coach fare, a "Y" class fare, as the lowest rate. What will the CAB be doing to either broaden the consumer's knowledge of fares, or to encourage carriers to provide more information about varying fares and services?

Answer. The Board's staff publishes a booklet for consumers which reminds travelers to check for the lowest fares. Generally, I feel that promoting various fares and services is in the individual airline's self interest. However, if we were to find evidence that a carrier was intentionally trying to mislead passengers through bait and switch advertising or other deceptive practices, I am sure the Board would institute an investigation and impose an appropriate sanction if the allegations proved to be true.

Question 3. I know you to be an advocate of early sunsetting of the CAB. What effect is total deregulation having on certain inter-carrier agreements like interlining?

Answer. I understand that the Board has expressed the view that deregulation will not have any significant effect on interlining. I am not yet fully familiar with how interlining operates or how it might operate after deregulation. But, I intend to look into this question and all other loose ends related to sunset over the next several months.

If you or any other members of the Committee have particular questions related to sunset that you would like to have answered by the Board please do not hesitate to contact me. In the meantime, I hope my answers here are sufficient to complete the record on my confirmation hearing.

Sincerely,

DAN MCKINNON,
Chairman.

THE WHITE HOUSE,
Washington, D.C., October 5, 1981.

DEAR MR. MCKINNON: From information which you have provided this office in connection with your proposed appointment as Chairman of the Civil Aeronautics Board ("the Board" or "the CAB"), it is our understanding that among your financial holdings are the following: First, 77 percent of the issued and outstanding shares of stock of Broadmoor Broadcasting Corporation, the licensee of radio station KSON-AM, San Diego, California and the parent corporation and owner of 100 percent of the issued and outstanding shares of stock of KSEA, Inc., the licensee of radio station KSON-FM, San Diego, California; second, 20 percent of the issued and outstanding shares of stock of Texas Telecasting Company, Inc., the licensee of KBMT-TV, Beaumont, Texas; and third, 30.85 percent of the issued and outstanding shares of stock of Texas Telecasting Company, Inc., the licensee of KIII-TV, Corpus Christi, Texas.

You have told us that during the first six months of 1981, gross advertising revenues from your two radio stations totalled approximately one million dollars, of which approximately $67,000 was derived from airlines, tour operators and travel agencies subject to the Board's regulatory jurisdiction. Because of your interest in Broadmoor Broadcasting Corporation, the revenues derived from such advertising constitute an indirect financial interest within the meaning of 18 U.S.C. § 208(a).

With respect to the two television stations, any revenues derived from advertising by airlines, tour operators and travel agents also constitute an indicrect financial interest within the meaning of 18 U.S.C. § 208(a). Of course, as a minority shareholder of the two television stations, your beneficial interest in those advertising revenues is substantially less than the revenues received by the radio stations.

In your letter of September 16, 1981, to David M. Kirstein, General Counsel of the CAB (a copy is attached), you agreed not to exercise any control over the daily management activities of any of your broadcast properties after your appointment. In addition, with regard to the radio stations, in which you own a controlling interest, you have appointed a general manager who has assumed responsibility for day-to-day management operations.

Working closely with the Office of Government Ethics and the Office of the General Counsel of the CAB, we have determined that in this case your indirect financial interests in the advertising revenues discussed above are "de minimis" and are not so substantial or direct as to affect the integrity of the services which may be expected of you while serving as Chairman of the Board, provided the following conditions are observed: First, as you have previously agreed, you will not exercise any control over the daily management activities of your broadcast properties; second, commencing January 2, 1982, the general manager of Broadmoor Broadcasting Corporation and KSEA, Inc., will file a quarterly report with the General Counsel of the CAB which lists the total gross advertising revenues per station per quarter, and the identity and amount of every advertising account placed with each station by airlines, tour operators and travel agents; and third, commencing January 2, 1982, the general managers of Texas Telecasting Company, Inc., and South Texas Telecasting Company, Inc., will file quarterly reports with the General Counsel of the CAB which lists the total gross advertising revenues per station per quarter, and the identity and amount of every advertising account placed with each station by airlines, tour operators and travel agents.

The foregoing determination, made under the authority set forth in 3 C.F.R. 100.735–32, applies only to your present ownership interests in radio and television stations as set forth in the first paragraph of this letter.

Should you have any questions concerning the action I have taken in this case, please do not hesitate to contact me.

Sincerely,

FRED F. FIELDING,
Counsel to the President.

CIVIL AERONAUTICS BOARD,
Washington, D.C., September 28, 1981.

Senator BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Capitol, Washington, D.C.

DEAR MR. CHAIRMAN: As the CAB's designated ethics official, I must certify to the Senate Committee on Commerce, Science and Transportation that Mr. McKinnon's financial interests do not pose, from the CAB's perspective, a conflict of interest problem in confirming his nomination as Chairman of the CAB. The Board's inquiry has focused on the following issues: (1) whether Mr. McKinnon holds any financial interest in any civil aeronautics enterprise; [1] (2) whether he is engaged in any other business, vocation or employment; [2] and (3) whether his financial interests would conflict with his duties as Chairman of the CAB.[3] In the course of preparing this letter, my staff has discussed these issues with the Assistant White House Counsel, Chris Hicks, and with Gary Davis of OGE.

In his SF–278, Financial Disclosure Statement (Appendix A), Mr. McKinnon states that he is presently the majority stockholder in Broadmoor Broadcasting Corporation, San Diego, California, which owns and operates two radio stations, and a minority stockholder in two television stations. In addition, he has financial interests in a music publishing company, a ranch, and stockholdings in a natural gas company. As none of these holdings are primarily civil aeronautical in nature, I can certify that he does not hold any ownership interest in a "civil aeronautics enterprise," as defined in 49 U.S.C. 1321(b) and the Board's regulations.[4]

When I conferred with Mr. McKinnon in my office on September 11, 1981, he indicated to me that he has resigned from the positions of Vice-President and

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[1] The term "civil aeronautics enterprise" is defined in 14 CFR Part 370.735–13(d) as ". . . any enterprise which is primarily civil aeronautical in nature."

[2] 49 U.S.C. 1321(b) prohibits Board Members from engaging in outside employment.

[3] 18 U.S.C. 208 prohibits federal executive branch and independent agency employees from participating in any "particular matter" in which, to his knowledge, ". . . he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest."

[4] *Supra*, note 1.

Member of the Board of Directors of Texas Telecasting Company, Inc., and Chairman of the Board of Directors of South Texas Telecasting Company, Inc. In addition, on September 16, 1981, Mr. McKinnon submitted his assurance in writing (Appendix B) to resign from the positions of President and Member of the Board of Directors of Broadmoor Broadcasting Company and KSEA, Inc.

My staff has been in contact with Mr. McKinnon's attorney, Dennis Wickham, Esquire,[5] who has submitted two employee severance agreements for my approval and OGE's concurrence (Appendices C and D). After careful review and consultation with Gary Davis of OGE, I find that the severance agreements comply with the applicable OGE Regulations.

I understand from Mr. McKinnon and his attorney that approximately $54,000 of the 1980 gross advertising revenues for the two radio stations of approximately $2.1 million is derived from advertisements by airlines, travel agents and tour brokers that are regulated by the Board or have an economic interest in the Board's activities. In the first six months of 1981, approximately $67,000 of the radio stations' total gross advertising revenues of approximately $1.0 million is derived from similar sources.[6] Based on this estimate, I recommend that a waiver of this interest be granted pursuant to 18 U.S.C. 208(b), on the ground that: (1) the advertising revenue that Mr. McKinnon's stations derive from entities regulated by the Board is "de minimis" in nature and not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him as Chairman of the CAB; (2) the practical and logistical difficulties posed by divestiture of the radio and television broadcasting stations are so substantial that it is questionable that divestiture would be completed prior to the proposed 1983 sunset of the Board;[7] (3) a trust arrangement could not legally qualify as either a "blind," "excepted," or "diversified" trust within the meaning of OGE's regulations;[8] and (4) Mr. McKinnon has agreed to turn over the daily operation of his stations to an independent general manager, although, as a licensee, he will retain ultimate control of the stations as required by 47 U.S.C. 310.[9] As a part of any Section 208(b) waiver, the CAB will require the general manager of the radio and television stations to report to CAB on a quarterly basis the identity and amount of each advertising account placed by airlines, travel agencies and tour operators on each station, as well as gross advertising receipts for the quarter.

Mr. McKinnon has agreed to these proposals, subject to OGE's concurrence. Based on the foregoing, I can now certify to your committee that Mr. McKinnon's financial interests do not pose a conflict of interest problem in confirming his nomination as Chairman of the CAB.

If you need any furthr information or desire any further assistance, please contact Mr. Bradford K. Talamon, Office of the General Counsel, at (202) 673-5791.

Sincerely,

DAVID M. KIRSTEIN,
General Counsel.

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[5] P.O. Box X-3399, San Diego, California 92103 (714-291-3003).

[6] Mr. McKinnon's attorney, Mr. Dennis Wickam, has agreed to provide my staff with a computer listing of all advertising accounts with each of the radio and television broadcasting stations since January 1, 1981. This data should provide sufficient verification of Mr. McKinnon's estimates.

[7] In addition to the problem of finding one or more pourchasers for the stations (a process that will undoubtably take several months to complete), any sale of the stations would have to be approved by the Federal Communications Commission (which will undoubtably take several more months).

[8] Any such proposed trust would pose the problem of the grantor's (Mr. McKinnon's) knowledge of identity of the trust assets, as well as the related problem of non-diversification of the trust assets.

[9] The intent of this proposed solution is to sever the "chain of knowledge" between Mr. McKinnon and the advertisers on his stations. With an arrangement such as this, it would be very difficult for a litigant who challenges a CAB action in court to link the official actions of the Chairman to specific knowledge of any benefit which he could arguably derive from an interested party, particularly when coupled with a Section 208(b) waiver based on a financial interest that has been determined to be "de minimis."

The Office of Information Law and Policy, U.S. Department of Justice, has informally advised my staff that the requirement imposed by 49 U.S.C. 1321(b) that no Member engage in any ". . . business, vocation or employment . . ." does not bar Mr. McKinnon from owning any interest in the stations.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., October 1, 1981.

FRED F. FIELDING,
Esquire, Counsel to the President,
The White House, Washington, D.C.

DEAR MR. FRED FIELDING: We are in receipt of a copy of Mr. Dan McKinnon's letter of September 16, 1981 to the General Counsel of the Civil Aeronautics Board (CAB) which you have transmitted to us for comment.

As we understand it, Mr. McKinnon, upon confirmation of his appointment to the CAB, will immediately resign as President and member of the Board of Directors of Broadmoor Broadcasting Corporation and KSEA, Inc., licensees of radio stations KSON-AM and KSON-FM. Mr. McKinnon, however, will retain his ownership interests in those broadcast properties but will not be engaged in the active management of the radio stations' operations. Neither Mr. McKinnon's retention of his broadcast ownership interests nor his decisions to resign as president and director and to refrain from day-to-day management while serving as a CAB member present any legal problems under the Communications Act or the regulations which this agency administers.

From our standpoint, we find no impropriety in Mr. McKinnon serving as a Civil Aeronautics Board Member while also retaining his broadcast interests.

Of course, the stations may not use Mr. McKinnon's governmental position to promote their commercial interests. Such activity would raise questions concerning whether the stations have been operated in the public interest.

We appreciate the opportunity to submit our views on this matter and if anything further is required, kindly advise us.

Sincerely yours,

STEPHEN A. SHARP,
General Counsel.

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